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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13

14 FRANK COHN, Individually ) Case No.: 2:11-CV-1832-JCM-RJJ  
and on behalf of a class of )  
all similarly situated ) JOINT MOTION OF THE PARTIES  
15 persons, ) FOR MODIFICATION OF THIS  
COURT'S DISCOVERY SCHEDULE

16 Plaintiff, )  
(SECOND REQUEST)

17 v. )

18 RITZ TRANSPORTATION, INC., )  
AWG AMBASSADOR, LLC, ALAN )  
19 WAXLER, and RAYMOND )  
CHENOWETH, )

20 )  
21 Defendants. )

22 \_\_\_\_\_ )

23 The parties, through their respective counsel, hereby  
24 present this joint motion for a modification of the discovery  
25 schedule entered by this Court.

26 **CURRENT DISCOVERY SCHEDULE**

27 The Court has set October 31, 2012, as the date for the  
28 completion of discovery in this case (Docket #61, Order of

1 July 6, 2012). It is the parties' understanding that such  
2 current schedule does not preclude expert discovery taking  
3 place after that date, subject to a request for the same, the  
4 parties being unsure at this point if expert testimony will  
5 be relied upon in this case.

6 RELEVANT PRIOR HISTORY AND NATURE OF THIS CASE

7 This case was commenced on October 26, 2011 in the  
8 District Court of the State of Nevada and removed to this  
9 Court on November 15, 2011. This case makes "hybrid" Nevada  
10 State Law Rule 23 "opt out" class and FLSA "opt in"  
11 collective action allegations of unpaid overtime wages on  
12 behalf of defendants' driver employees. The Court entered an  
13 initial scheduling order on February 14, 2012 (Docket #21)  
14 which set forth a July 31, 2012 date for the completion of  
15 discovery. On July 5, 2012, this court entered its first  
16 order extending the discovery deadline to October 31, 2012.

17 An extension of the discovery deadlines is requested so  
18 that the parties can obtain and analyze the relevant data in  
19 this complex wage and hour case and is not for purposes of  
20 delay. Discovery did not proceed as the parties and the  
21 Court had desired for three reasons: (1) On February 14,  
22 2012, the Court also directed the circulation by mail of an  
23 "opt in" joinder notice under the FLSA and a 60 day  
24 post-notice joinder period. A "second" notice mailing order  
25 was entered on March 29, 2012 (Docket #34) and had an "opt  
26 in" joinder period that extended until June 4, 2012—almost to  
27 the close of the original discovery period. Ultimately a  
28 total of 59 persons elected to opt in to this litigation for

1 the FLSA case; (2) During the same time, Defendants retained  
2 new counsel to substitute for their original counsel in this  
3 matter, Norman Kirshman. Mr. Kirshman had been out of the  
4 office a great deal due to the illness of a close family  
5 member. The substitution process required a significant  
6 amount of time for incoming counsel to get familiar with the  
7 case and the discovery status; and (3) much of the discovery  
8 critical to both plaintiffs and defendants involves wage and  
9 payroll information. It is important to note that during the  
10 relevant time period, there were two separate entities, Ritz  
11 and AWG, that later merged. Moreover, there were several  
12 different time systems utilized by the Defendants during the  
13 relevant time period. For example, prior to the merger, the  
14 Ritz drivers simply noted all hours worked on the driver's  
15 trip sheet. This information was then manually entered into  
16 an excel spreadsheet and payroll was computed. The  
17 Defendants made available all trip sheets to plaintiffs as  
18 early as April of this year, but they are only in hard-copy  
19 format, and difficult and time-consuming to evaluate. The  
20 parties have cooperated on trying to pull additional data  
21 from the Ritz database. However, one obstacle after another  
22 beyond the control of the parties occurred. By way of  
23 example, the individual that was assisting Defendants in  
24 obtaining electronic format of all available data  
25 unexpectedly passed away. This delayed a determination on  
26 whether or not electronic data could be pulled from the old  
27 payroll system that is no longer in use.

28 As a result, the parties conferred and determined that

1 an inspection by Plaintiffs and their consultant would be  
2 helpful. Plaintiffs have inspected the computer data files.  
3 Those files are stored on two different systems. Some of  
4 that computer data had to be re-assembled as it was no longer  
5 being actively used. These circumstances have complicated  
6 and slowed the discovery process; however, the parties have  
7 been diligently working towards obtaining the relevant data.  
8 That data will then need to be analyzed and expert discovery  
9 related to the same may need to be conducted.

10 CURRENT STATUS OF DISCOVERY

11 The parties have been working cooperatively to move  
12 discovery forward. Those efforts have included:

- 13 • Defendants have provided a significant amount of  
14 electronic records on the nature of the driving performed by  
15 the putative class members, in particular their  
16 transportation of passengers across state lines;
- 17 • Defendants have made available all the underlying trip  
18 sheets that contain the hours worked per day for each driver.  
19 However, this documentation is in hard-copy form only and  
20 difficult to evaluate.
- 21 • Defendants had attempted to provide full and complete  
22 copies of the computerized payroll and time records but,  
23 unfortunately, were unable to do so owing to some issues with  
24 accessing such computer data files. The parties conferred  
25 and conducted an inspection of the defendants' computer  
26 system at defendants' place of business on September 18,  
27 2012, with the assistance of a consultant retained by  
28 plaintiffs' counsel. As a result of that conferral and

1 inspection the parties now believe that the relevant data  
2 files can be accessed and produced in the very near future;

3 • Depositions of putative representative plaintiff Frank  
4 Cohn is scheduled for September 27, 2012. Named defendant  
5 Alan Waxler will be deposed on September 28, 2012. The other  
6 named defendant, Mr. Chenoweth, is not currently in Las  
7 Vegas, is elderly, and travel is difficult for him. Thus,  
8 scheduling his deposition has been more difficult, but will  
9 be scheduled. The parties are also arranging other necessary  
10 depositions and continuing to provide other necessary  
11 discovery.

12 WHY DISCOVERY SHOULD BE ALLOWED TO  
13 CONTINUE PAST OCTOBER 31, 2012

14 The parties do not believe it will be possible to  
15 complete all non-expert discovery in this case by October 31,  
16 2012. The relevant computer payroll data has still not been  
17 collected and analyzed and such discovery is crucial to this  
18 case.

19 The parties are in agreement that a full development of  
20 the relevant facts and circumstances in this case through  
21 discovery is in the interests of the parties and the Court.  
22 The conducting of thorough discovery proceedings will greatly  
23 increase the likelihood that the parties can resolve this  
24 matter through settlement and spare the Court the burden of a  
25 trial of this case. It is unfortunate that discovery has not  
26 proceeded more swiftly, but the parties have been reasonably  
27 diligent in their efforts to move this case forward. This is  
28 complicated and potentially quite substantial class action

1 case. It has not yet been pending for one year. Neither  
2 party is claiming any prejudice will result from these  
3 proceedings taking a slower pace to conclusion. The parties'  
4 inability to complete discovery by October 31, 2012, is not  
5 meant for purposes of delay nor a result of neglect or  
6 inappropriate behavior, but simply the result of the  
7 complicated and unexpected circumstances encountered by this  
8 litigation.

9 The parties submit an extension of discovery for the  
10 period of 90 days for fact discovery would allow them to  
11 complete discovery in this matter. Thereafter, the parties  
12 would conduct expert discovery as necessary. Accordingly, the  
13 parties request an appropriate extension of the current  
14 discovery schedule, as outlined below:

15 1. The current date for the close of fact discovery in  
16 this case is October 31, 2012. The parties propose extending  
17 the new date to January 29, 2013.

18 2. The parties propose setting the deadline for  
19 initial expert disclosures to February 28, 2013.

20 3. The parties propose setting the deadline for  
21 rebuttal expert disclosures to March 30, 2013.

22 4. The parties propose setting a deadline for all  
23 expert discovery to April 29, 2013.

24 4. The parties propose setting the deadline for filing  
25 of dispositive motions to May 29, 2013.

26 5. The parties propose setting the deadline for filing  
27 a Pretrial Order if no dispositive motions are filed to June  
28 29, 2013, or 30 days after a ruling on all dispositive

1 motions.

2 6. In accordance with LR 26-3, the parties agree to  
3 submit an interim status report on November 30, 2012, which  
4 is 60 days prior to the new discovery deadline if the  
5 aforementioned proposed extensions are granted.

6 7. In accordance with LR 26-4, the parties agree that  
7 any stipulation or motion for modification or extension of  
8 the new discovery plan and scheduling order, if any, will be  
9 made at least 20 days prior to the new discovery cut-off  
10 date.

11  
12 A status conference is currently scheduled in this case  
13 for October 4, 2012, at 9:00 a.m.

14  
15 For all the foregoing reasons, parties' joint motion  
16 should be granted in its entirety together with such other  
17 further and different relief that the Court deems proper.

18  
19 Dated: September 19, 2012  
20 LEON GREENBERG  
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Dated: September 19, 2012  
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